IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 577 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT VENTURE FINANCE LIMITED,

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 577 of 2003

MR TS NANAVATI for Petitioner No. 1

MR IM PANDYA, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 03/03/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. T.S.Nanavati for the petitioner -original complainant and ld. APP Mr. I.M.Pandya for the State. The petitioner company is the

original complainant of a criminal complaint filed by the Company for the offences punishable under Sections 403, 405, 406, 409, 415, 417, 418, 420 and 477-A R/w Sections 34, 114 and 120-B of Indian Penal Code against the accused persons named in the said complaint. On the date of filing of the complaint, the Court ordered to investigate the crime through police under Sec.156(3) of CrPC.

2. On completion of investigation, the Investigating Agency filed "C" Summary Report, but ld. Judicial Magistrate (First Class) concerned did not accept the summary asked for by Investigating Agency considering the objections raised by the present revisioner-petitioner and proceeded with the matter by taking cognizance by issuing process against the accused persons vide order dated 24.7.2003, without ordering further investigation, as prayed for under Sec.173(8) of CrPC.

3. Being aggrieved by the order dated 24.7.2003, the present petitioner moved this Court by way of filing Criminal Revision Application No.475/2003 and after hearing the parties, this Court (Coram: D.P.Buch, J) by an order dated 26.09.2003, quashed and set aside the impugned order dated 24.7.2003 taking cognizance passed by ld.Magistrate. For the sake of brevity, I would like to reproduce the operative portion of the said order:-

> " For the foregoing reasons, this application is allowed, the impugned order is set aside and the matter is ordered to be remanded to the trial court for considering the prayer of the petitioner for referring the matter to the police Investigation agency for further investigation u/s 173(8) of the said Code. After considering the said issue, the trial court will be at liberty to decide the said issue in accordance with law. Rule is made absolute to the above extent. "

This casts certain obligations on the ld. Judicial Magistrate (First Class) to decide the issue in a particular context.

4. The grievance of the petitioner company is that ignoring the order passed by this Court, the impugned order has been passed by ld. Magistrate under a clear misconception of law and authority/powers vested in him. The application of the original complainant was for issuance of appropriate directions to the Investigating Agency for further investigation under Sec.173(8) of CrPC. Considering the observations made by this Court in the above-mentioned order passed by this Court and the fact that some further investigation is required, the

Investigating Agency should have been directed to investigate the crime and to issue additional report or further chargesheet, when it has not been held that there is neither need nor scope to order further investigation.

5. In view of the submissions made by ld. counsel appearing for the petitioner and facts and circumstances of the case, it clearly transpires that this is a clear case of non-exercise of discretion vested with the Court though directed and of misconception of law. The existence of the earlier order passed by this Court quashing the order dated 24.7.2003 while dealing with earlier Cri. Rev. Application No. 457/2003 filed by the present petitioner, uproots the order of issuance of process, could not have been ignored. Therefore, there was no reason for the ld. Magistrate to say, while passing the impugned order that "because of issuance of process, there should not be any further investigation". There is no discussion as to need or as to scope of such further investigation. Even otherwise this reason assigned by the ld. Magistrate is not inconformity with the settled legal proposition. It is always open to the ld. Magistrate to order further investigation if the Court is satisfied that the same is necessary to discover the truth, or it found incomplete, at appropriate stage. For short, this Cri. Revision Application requires to be allowed.

6. For the reasons aforesaid, this Criminal Revision Application is allowed. The impugned order dated 15.11.2003 passed by ld. Magistrate concerned is hereby quashed and set aside. The original papers lying with the concerned court while submitting "C" Summary Report be sent to concerned police station and Investigating Agency is directed to carry out further investigation in the matter through police officer not below the rank of Deputy Supdt. of Police and submit detailed report.

7. Rule is made absolute.

[C.K. BUCH, J]
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